

IN THE MATTER OF LICENSE NO. 26856
AND ALL OTHER LICENSES, CERTIFICATES AND DOCUMENTS
Issued to: GUY H. CHADBOURNE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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GUY H. CHADBOURNE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 14 June 1955, an Examiner of the United States Coast Guard at Norfolk, Virginia, admonished Appellant as holder of License No. 26856 upon finding him guilty of misconduct and negligence based upon three specifications alleging in substance that while serving as Master on board the American SS GROTON TRAILS under authority of the license above described from 17 March to 25 March 1955, he wrongfully navigated his vessel in unprotected waters without closing the cargo hatches in violation of 46 CFR 97.15-20(a) (misconduct); from 17 March to 4 April 1955, he wrongfully navigated his vessel across the Atlantic Ocean without making the cargo hatches tight in violation of 46 CFR 97.15-20(a) (misconduct); and during the above voyage which terminated at Baltimore, Maryland, on about 5 April 1955, he neglected and failed to make the entry in the Official Logbook concerning the unsecured condition of the hatches as required by 46 CFR 97.15-20(c) (negligence).

At the hearing, Appellant was represented by counsel who waived the preliminary explanations and the reading of the specifications. Counsel entered a plea of "not guilty" to each misconduct specifications and a plea of "guilty" to the negligence specification.

Thereupon, the Investigating Officer made his opening statement and the parties stipulated that the case be submitted to the Examiner on the basis of three statements taken at the preliminary investigation from Appellant, the Chief Mate and the Deck Department delegate who was serving as an able seaman on the voyage in question. After the Examiner accepted these three statements in evidence, both parties rested.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel, the Examiner announced his findings and concluded that the charge had been proved by proof of the misconduct specifications and by plea to the negligence specification. The Examiner then entered the order of an admonition directed against Appellant.

From that order, this appeal has been taken, and it is urged that the Examiner erred in stating that Appellant admitted an infraction of 46 CFR 97.15-20(a); there was no violation of the latter regulation which states that "all exposed cargo hatches" must be closed and "made properly tight"; the cargo hatches were not "exposed" to the sea since the ship had a freeboard of 30 feet; no water was shipped on the weather deck in rough water; the seamen working in the holds were protected by leaving the hatches open because they received fresh air and light; and Appellant's action was a legitimate exercise of the discretion permitted the Master by 46 CFR 97.15-20(c) to leave the hatches open at his discretion and to make a notation of such fact in the Official Logbook. In conclusion, it is respectfully requested that, for the above reasons, Appellant be exonerated from the charges made against him.

APPEARANCES: Messrs. Seawell, Johnston, McCoy and Winston of Norfolk, Virginia, by John W. Winston, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a foreign voyage including the dates of 17 March to 4 April 1955, inclusive, Appellant was serving as Master on board the American SS GROTON TRAILS and acting under authority of his License No. 26856.

On 17 March 1955, the ship departed from Rotterdam, Netherlands, bound for a United States Gulf port to take on a cargo of grain. The hatch beams for all 5 main deck cargo hatches were in place and secured. All hatch cover boards were left on deck in order to ventilate the holds and to facilitate the cleaning of the coal residue out of the holds.

When the ship was diverted to Baltimore, Maryland, on 25 March 1955, the hatch boards were put in place since word was also received that it was not necessary to continue cleaning the holds to receive a cargo of grain. Only the number 5 hold had been cleaned.

The tarpaulins and battens were not used at any time during the crossing of the Atlantic Ocean to secure the hatch covers since the vessel was protected by a freeboard of about thirty feet against taking sea water on deck. This protection was effective despite some bad weather encountered on the voyage.

No entries in the ship's Official Logbook were made concerning the above conditions of the cargo hatches while the ship was at sea. The foreign voyage terminated at Baltimore on 4 April 1955.

OPINION

There is no disagreement as to the material facts in this case. But despite the several contentions on appeal which are related to the findings of fact above, I do not agree with Appellant's

conclusion that there was no violation of the regulations as alleged in the misconduct specifications. For 7 or 8 days in unprotected waters the 5 cargo hatches were "exposed" in the sense that they were completely open to the elements; and for the following 10 days the hatches were not properly secured with tarpaulins and battens. This did not conform with the practices of good seamanship regardless of the vessel's considerable amount of freeboard. During this time of year in that part of the Atlantic Ocean, it is quite possible that the ship might have run into such violent weather as would have compelled the Appellant to order the hatch boards put in place or secured with the tarpaulin and battens (if the boards were already in place). The obvious danger to the crew presented by such a development would have been accentuated if this predicament occurred at night.

The common acceptance of the practice to batten down all hatches as a matter of good seamanship while crossing the Atlantic Ocean is indicated by the Chief Mate's statement that he had never before made such a voyage with the hatches unsecured and by Appellant's refusal to answer the question as to whether he had previously made the voyage without the hatches secured. This practice is harmonious with the regulation which states, in effect, that exposed cargo hatches and other specified openings may only be opened if it becomes essential for the safety of the vessel. 46 CFR 97.15-20(c).

If it was necessary to clean the holds while underway, it could have been done by completely opening one cargo hatch at a time. The record shows that this could have been done conveniently since only the number 5 hold was actually cleaned before the ship was diverted and her orders changed with respect to cleaning the holds. Concerning any necessity for ventilation in the holds prior to cleaning, this could have been accomplished by opening only one section of the hatch boards on each side of the individual holds rather than leaving all of the hatches completely open except for the hatch beams. Consequently, I conclude that there were violations of the regulations as alleged.

It is noted that this regulation (46 CFR 97.15-20) will be amended effective 90 days after the date of publication of the amendment in the Federal Register of 9 August 1955. See Volume 20 Federal Register 5725. This amendment does not change the general import of the regulation insofar as it is applicable to this case. In accordance with the presently accepted standards, the amendment specifically states that certain openings must be made watertight by the use of tarpaulins and in all respects secured for sea before leaving protected waters except at the direction of the Master for reasonable purposes which are compatible with the safety of the vessel, crew and cargo. My decision in this case would be the same under the amended regulation.

ORDER

The order of the Examiner dated at Norfolk, Virginia, on 14 June 1955 is AFFIRMED. In accordance with 46 CFR 137.09-75(d), Appellant's advised that this admonition will be a matter of official record.

A. C. Richmond
Vice Admiral, U. S. Coast Guard

Commandant

Dated at Washington, D. C., this 30th day of September, 1955.